

BEFORE THE FEDERAL ELECTION COMMISSION

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SECRETARIAT

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In the Matter of)

Friends for Jack Metcalf)
Committee and Frank M.)
McCord, as treasurer)

MUR 4546

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On September 30, 1997, the Commission found reason to believe Friends for Jack Metcalf for Congress Committee (the "Committee") and Frank M. McCord, as treasurer, violated 2 U.S.C. § 434(b)(3)(A). The basis for the Commission's finding was the failure of respondents to provide complete contributor information on its April, July, and October 1996 Quarterly Reports and failure to demonstrate "best efforts" under 11 C.F.R. § 104.7(b). At that time, the Commission approved interrogatories and a request for production of documents to respondents, which were sent October 6, 1997. After receipt of the response to the issued interrogatories, this Office sent respondents the General Counsel's Brief dated April 13, 1998. This Office received a response brief from the Committee on May 20, 1998. This report describes and analyzes the information in this response, and reflects this Office's recommendation that the Commission find probable cause to believe that Friends for Jack Metcalf and Frank M. McCord, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

II. ANALYSIS

This Office's analysis of this matter is contained in the General Counsel's Brief dated April 13, 1998, which is incorporated herein by reference.

Respondents make two arguments as to why the Commission should not find probable cause against them. First, they argue that their efforts regarding their reports were not recognized in the General Counsel's Brief, and that recognition of those efforts should lead to a no probable cause finding. As noted in the General Counsel's Brief at pp 3-4, respondents efforts were inconsistent and did not result in timely reporting of the required information. The Committee did make some effort to gather missing contributor information by sending out a letter, although the Committee did not even start trying to collect this information until late July 1996 at the earliest. Respondents argue that this attempt at corrective action should be sufficient to obviate any need for further action by the Commission because that is what the Reports Analysis Division ("RAD") instructed them to do when the committee sought guidance. See Respondent's Brief dated May 20, 1998. However, the Committee did not contact RAD until after receipt of a Request for Additional Information ("RFAI") involving the April 1996 Report, which the Committee received in June.

Although RAD did instruct the Committee to send a follow up letter to its contributors, RAD was only restating the procedure in the Regulations requiring that a follow up letter be sent within thirty days of the receipt of a contribution. Even though it appears that the Committee did eventually send a follow up letter, they did not follow through by filing amendments to the quarterly reports in a timely fashion. These actions do not put respondents within the best efforts safe harbor for reporting violations, although they may be considering as mitigating.

Second, respondents argue that finding probable cause in this matter would be inconsistent with the Commission's disposition of other "best efforts" MURs. In support of their argument, respondents cite twenty-one MURs closed from January 1, 1996 to the present,

involving "best efforts" issues¹, of which they claim the Commission pursued only one and closed the rest because they did not warrant further pursuit. Contrary to respondents' assertion, of the MURs they cited, one did not involve best efforts², in three others the Commission made reason to believe findings³—and two of those matters concluded with respondents signing conciliation agreements⁴, eleven were closed without action because they had become stale under the Enforcement Priority System (EPS)⁵, and six were closed under EPS because they did not rate high enough to warrant pursuit.⁶

These include: a) a high percentage rate of non-compliance (between 63 and 74 percent); b) a significant total dollar amount of the contributions for which there is no employer and/or occupation information (\$47,000); c) the consistent filing of reports which lacked the necessary information (all three of the 1996 Metcalf Committee Quarterly Reports); and d) the failure to amend reports during the election cycle (in fact not until one full year *after* the election). Those factors distinguish this case from those cited by respondents and belie any argument of inconsistent treatment.

¹ Respondents identified the following MURs: 4033, 4044, 4066, 4067, 4111, 4113, 4127, 4165, 4184, 4348 (closed in 1996); 4167, 4172, 4271, 4273, 4332, 4422 (closed in 1997); 4170, 4435, 4542, 4567 and 4696 (closed in 1998).

² See MUR 4273.

³ See MURs 4044, 4167 and 4170 (taking no further action).

⁴ See MURs 4044 and 4167. MUR 4044 involved a 97.3% failure to comply rate, and a \$44,000 civil penalty. MUR 4167 (Republican National Committee, et al. v. FEC, Civil Action No. 94-5248 (D.C. Cir. 1996)) involved failure rates of 16% (RNC); 55% (NRCC); and 48% (NRSC). The final civil penalty (against the RNC) was \$20,000.

⁵ See MURs 4033, 4066, 4067, 4111, 4113, 4127, 4184, 4422, 4435, 4542 and 4567.

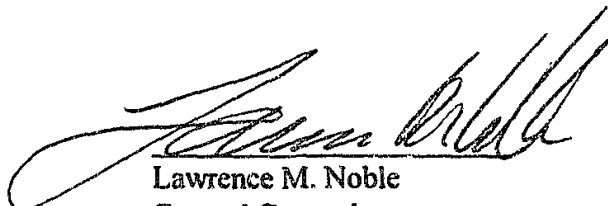
⁶ See MURs 4165, 4348, 4271, 4273, 4332 and 4696.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Find probable cause to believe that Friends for Jack Metcalf and Frank M. McCord, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).
2. Approve the attached conciliation agreement and appropriate letter.

12/17/98
Date


Lawrence M. Noble
General Counsel

Attachment:

1. Conciliation Agreement

Staff assigned: Tara Meeker